

REMARKS

Claims 1-10 are pending in the captioned application. The Examiner has indicated that claims 1-10 are subject to restriction and/or election for the following reasons:

This application contains claims directed to patentably distinct species of the claimed invention. Formula (I) is huge. Some method of restricting the application must be arrived at. The variation A3, A4 and M place the claims in many different classes, not to mention subclasses. What we need here is the election of a species with a fixed heterocyclic ring core, from which a genus can be constructed, in the manner of *In re Harnish*, 206 USPQ 300, at pages 305 and 306 where coumarin was the central Heterocyclic ring core, from which a genus could be constructed around.

Here, nothing is constant. We need an election of a constant heterocyclic ring core. See claim 5, here. A constant piperazine would let us construct a genus that was examinable in the time provided.

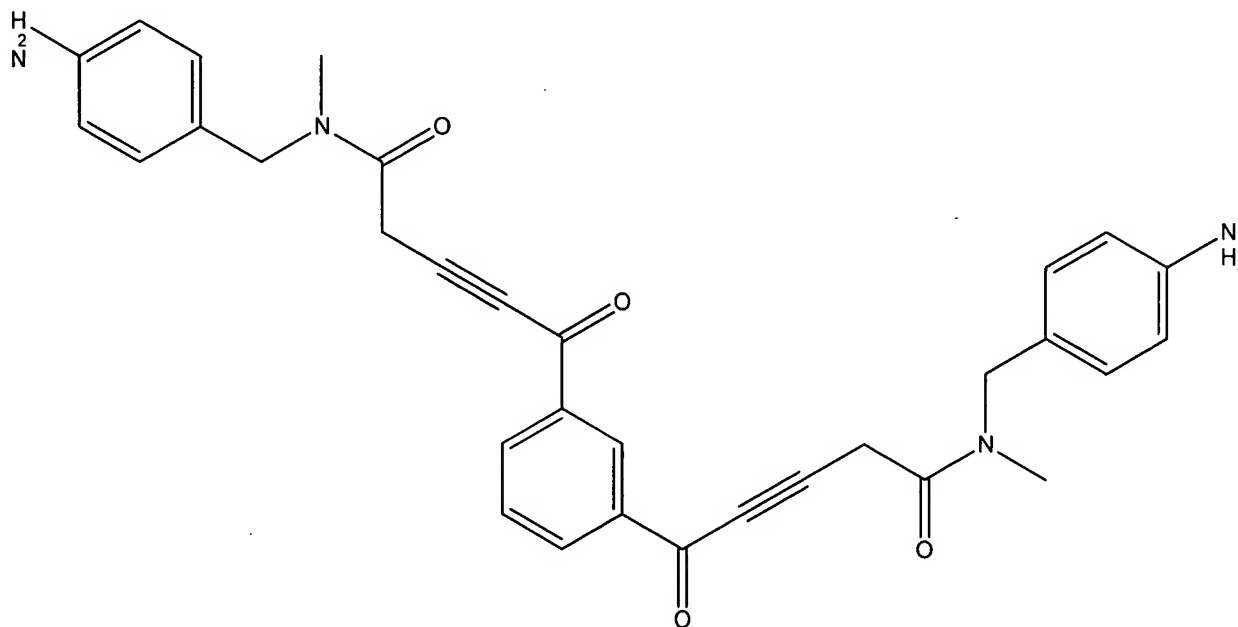
Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits. Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a generic claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Should applicant traverse on the ground that the species are not now of record showing the species to be obvious variants of clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103 of the other invention.

Claim 1 is generic to a plurality of patentably distinct species. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even if this requirement is traversed.

**PROVISIONAL ELECTION**

In response to the Examiner's requirement for applicant to elect a single disclosed species, applicant provisionally elects the species 1,3-Bis-(4-aminomethylbenzylaminocarbonylmethyl-1-oxyprop-2-ynyl)-benzene. The chemical structure of said species is as follows:



Claims 1-4 and 6-8 are readable on this species.

**TRAVERSAL**

Applicant respectfully traverses the Examiner's restriction / election requirement.

First, the restriction / election requirement is traversed because it omits "an appropriate explanation" as to the existence of a "serious burden" if a restriction were not required. See MPEP 803. A complete and thorough search for the subject matter set forth in the provisionally elected species set forth above would require searching the art areas appropriate to all other subject matter contained in this application. Since a search of the subject matter of the provisionally elected species and all other subject matter contained in this application would be coextensive, it would not be a serious burden upon the Examiner to conduct a search of all subject matter contained in this application.

Furthermore, applicants have paid a filing fee for an examination of all the claims in this application. If the Examiner refuses to examine the claims paid for when filing this application and persists in requiring applicants to file divisional applications for each of the groups of claims, the Examiner would essentially be forcing applicants to pay duplicative fees for the non-elected or withdrawn claims, inasmuch as the original filing fees for the claims (which would

be later prosecuted in divisional applications) are not refundable.

**CONCLUSION**

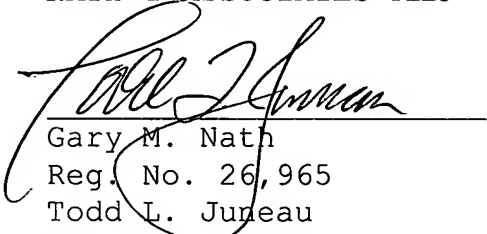
In view of the foregoing, applicants respectfully request the Examiner to reconsider and withdraw the restriction / election requirement, and to examine all of the claims pending in this application.

If the Examiner has any questions or wishes to discuss this matter, the Examiner is welcomed to telephone the undersigned attorney.

Respectfully submitted,

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Date: October 28, 2003  
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